

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 03-7085

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

JUAN MANUEL PADILLA-HERNANDEZ, a/k/a Francisco
Fonceca-Ballesteros, a/k/a Manuel Padilla
Hernandez, a/k/a Fonceca,

Defendant - Appellant.

Appeal from the United States District Court for the Middle
District of North Carolina, at Greensboro. Frank W. Bullock, Jr.,
District Judge. (CR-98-136)

Submitted: November 21, 2003

Decided: December 22, 2003

Before WIDENER, WILLIAMS, and TRAXLER, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Juan Manuel Padilla-Hernandez, Appellant Pro Se. Michael Francis
Joseph, Assistant United States Attorney, Greensboro, North
Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.
See Local Rule 36(c).

PER CURIAM:

Juan Manuel Padilla-Hernandez seeks to appeal the district court's order adopting the orders of the magistrate judge and dismissing his 28 U.S.C. § 2255 (2000) motion without prejudice. Padilla-Hernandez cannot appeal this order unless a circuit judge or justice issues a certificate of appealability, and a certificate of appealability will not issue absent a "substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2) (2000). A habeas appellant meets this standard by demonstrating that reasonable jurists would find that his constitutional claims are debatable and that any dispositive procedural rulings by the district court are also debatable or wrong. See Miller-El v. Cockrell, 537 U.S. 322, ___, 123 S. Ct. 1029, 1039 (2003); Slack v. McDaniel, 529 U.S. 473, 484 (2000); Rose v. Lee, 252 F.3d 676, 683 (4th Cir. 2001).

We have independently reviewed the record and conclude that Padilla-Hernandez has not made the requisite showing. Accordingly, we deny a certificate of appealability and dismiss the appeal. We grant Padilla-Hernandez leave to proceed on appeal in forma pauperis and dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED